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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

GENE ANTHONY BERNARD,

Plaintiff,

v.

MARTIN O'MALLEY¹,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:23-cv-00091-EPG

STIPULATION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES AND
EXPENSES PURSUANT TO THE EQUAL
ACCESS TO JUSTICE ACT; ORDER

(ECF No. 22)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of FOUR THOUSAND EIGHT HUNDRED DOLLARS AND 00/100 (\$4,800.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920. This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 After the Court issues an order for EAJA fees to Plaintiff, the government will consider the
2 matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586,
3 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability to honor the assignment will depend on
4 whether the fees are subject to any offset allowed under the United States Department of the
5 Treasury's Offset Program. After the order for EAJA fees is entered, the government will determine
6 whether they are subject to any offset.

7 Fees shall be made payable to Plaintiff, but if the Department of the Treasury determines that
8 Plaintiff does not owe a federal debt, then the government shall cause the payment of fees, expenses
9 and costs to be made directly to Counsel, pursuant to the assignment executed by Plaintiff. Any
10 payments made shall be delivered and made payable to Plaintiff's counsel, Jonathan O. Peña.
11 Additionally, any payment of costs under 28 U.S.C. §1920 may be made either by electronic fund
12 transfer (ETF) or by check.

13 This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA attorney
14 fees, and does not constitute an admission of liability on the part of Defendant under the EAJA or
15 otherwise. Payment of the agreed amount shall constitute a complete release from, and bar to, any
16 and all claims that Plaintiff and/or Counsel including Counsel's firm may have relating to EAJA
17 attorney fees in connection with this action.

18 This award is without prejudice to the rights of Counsel and/or Counsel's firm to seek Social
19 Security Act attorney fees under 42 U.S.C. § 406(b), subject to the savings clause provisions of the
20 EAJA.

21 Respectfully submitted,

22
23 Dated: January 22, 2024

24 /s/ Jonathan O. Peña
JONATHAN O. PEÑA
Attorney for Plaintiff

25
26 Dated: January 22, 2024

27 PHILLIP A. TALBERT
United States Attorney
MATHEW W. PILE
Associate General Counsel

Office of Program Litigation
Social Security Administration

By: * Zachary Berkoff-Cane
Zachary Berkoff-Cane
Special Assistant U.S. Attorney
Attorneys for Defendant
(*Permission to use electronic signature
obtained via email on January 22, 2024)

ORDER

Based upon the parties' Stipulation for the Award and Payment of Equal Access to Justice Act Fees and Expenses (ECF No. 22), IT IS ORDERED that fees and expenses in the amount of FOUR THOUSAND EIGHT HUNDRED DOLLARS AND 00/100 (\$4,800.00) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920, are awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: January 23, 2024

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE